IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6409 OF 2007

Shivaji Shankar Kothule .... Petitioner

versus

Nashik Municipal Corporation & ors.... Respondent.

Mr. Tushar N. Sonawane for the petitioner.
Mr. C.G. Gavnekar for respondent nos. 3 to 7.

CORAM; A.P. DESHPANDE, J.
DATED; 03RD SEPTEMBER, 2007

P.C.;

1. The order passed by the District Court Nashik, allowing the Misc. Appeal and rejecting the application filed by the present petitioner claiming temporary injunction has been challenged in this petition. The trial court without ascertaining as to whether primafacie case is made out and as to whether the other requirements of Order 39 Rule 1 are satisfied, such as irreparable loss and balnce of convenience, has proceeded to grant order of statusquo. The said order was challenged by filing the appeal by the present respondent. The appellate court after considering the case of the rival parties has come to the conclusion that the plaintiff has failed to make out a primafacie case, not only in regard to possession but also the title of the plaintiff to the suit property.

2. Perused the impugned order. The same does not call for any interference in exercise of writ jurisdiction. Thus writ petition is summarily dismissed.

3. The learned counsel for the petitioner at this stage seeks stay of this order for a period of four weeks, and it is stated that the impugned order was stayed till 1-9-2007. Per contra the learned counsel for the respondent states that the respondent does not propose to carry out any construction in the suit property and hence there is no need to grant stay of the impugned order. Having regard to the totality of the facts and circumstances, I am of the view that grant of stay for four weeks time would be appropriate. Hence this order shall remain stayed for a period of four weeks. The learned counsel for the petitioner undertakes to issue notice to the counsel for the respondent before initiating the proceedings that the petitioner would take up against this order.

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